



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2004

Ms. Kaylene Ray
Legal Services
Texas Workers' Compensation Commission
4000 South IH-35, MS-4D
Austin, Texas 78704

OR2004-0550

Dear Ms. Ray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 194880.

The Texas Workers' Compensation Commission (the "commission") received a request for the "practice type" of each provider with a case pending before the Medical Quality Review Panel ("MQRP"). You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by section 402.092 of the Labor Code, which provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in four limited circumstances. Labor Code § 402.092(a). Further, section 402.092(b) provides that the "[c]ommission investigation files are not open records for purposes of [the Public Information Act]." "Investigative file" is defined as "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." *Id.* § 402.092(d).

You inform us that the information at issue concerns possible violations of the Texas Workers' Compensation Act and commission rules implementing the act. You state that the commission maintains investigation files pursuant to three separate provisions of the Texas Workers' Compensation Act, including section 413.0512 of the Labor Code. This section establishes the MQRP to recommend to the commission's medical advisor appropriate action regarding doctors, other health care providers, insurance carriers, and utilization review

agents and the addition or deletion of doctors from the commission's list of approved doctors under section 408.023 or the list of designated doctors under section 408.122. *See* Labor Code § 413.0512. Additionally, section 413.0513 states that information maintained by or on behalf of the commission under section 413.0511 or 413.0512, and that is confidential under law, may not be disclosed. *See* Labor Code § 413.0513. You indicate that the submitted information is contained in investigation files under section 413.0512, and is confidential under section 402.092.¹

Based on our review of the submitted information and your representations, we conclude that the information at issue was compiled or maintained by the commission with respect to commission investigations authorized by law and therefore constitutes an investigative file that is subject to section 402.092. A release in response to the present request would not be permissible under section 402.092(a) of the Labor Code. Thus, the investigative file information must be withheld under section 552.101 in conjunction with section 402.092.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

¹You also assert that the information is confidential under section 413.0513. However, section 413.0513 is not a provision that makes information confidential *per se*. Rather, section 413.0513 merely sets out conditions for the release of information that is confidential under other law. *See* Labor Code § 413.0513(a), (b).

²As this determination is dispositive of all information at issue, we do not reach your claim under section 552.108 of the Government Code.

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 194880

Enc. Submitted documents

c: Ms. Lucinda D. Saxon
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(w/o enclosures)